

TAXATION AND REVENUE DEPARTMENT
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1100 St. Francis Drive
Santa Fe, NM 87504-0630

**REGULATION PERTAINING TO THE
TELECOMMUNICATIONS ACCESS ACT
SECTION 63-9F-11 NMSA 1978**

[3.21.7 NMAC]

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63-9F-3. DEFINITIONS.-- As used in the Telecommunications Access Act:

A. "commission" means the commission for deaf and hard-of-hearing persons;

B. "communications assistant" means an individual who translates conversation from text to voice and from voice to text between two end users of a telecommunications service;

C. "impaired" means having an impairment of or deficit in the ability to hear or speak, or both;

D. "intrastate telephone services" means all charges for access lines, special services and intrastate toll services, including all calls originating and terminating in the state;

E. "specialized telecommunications equipment" means devices that enable or assist an impaired individual to communicate with another individual using the telephone network

F. "telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunications services, and includes cellular service companies as defined in Subsection B of Section 63-9B-3 NMSA 1978; and

G. "telecommunications relay system" means a statewide telecommunications system through which an impaired individual using specialized telecommunications equipment is able to send or receive messages to and from an individual who is not impaired and whose telephone is not equipped with specialized telecommunications equipment and through which the unimpaired individual is able, by using voice communications, to send and receive messages to and from an impaired person.

63-9F-11. IMPOSITION OF SURCHARGE.--

A. A telecommunications relay service surcharge of thirty-three hundredths of one percent is imposed on the gross amount paid by customers for:

(1) intrastate telephone services, other than mobile telecommunications services, provided in this state; and

(2) intrastate mobile telecommunications services that originate and terminate in the same state, regardless of where the mobile telecommunications services originate, terminate or pass through, provided by home service providers to customers whose place of primary use is in New Mexico. The surcharge shall be included on the monthly bill of each customer of a local exchange company or other telecommunications company providing intrastate telephone services or intrastate mobile telecommunications services and paid at the time of payment of the monthly bill. Receipts from selling a service to any other telecommunications company or provider for resale shall not be subject to the surcharge. The customer shall be liable for the payment of this surcharge to the local exchange company or other telecommunications company providing intrastate telephone services to the customer. For the purposes of this subsection, "home service provider", "mobile telecommunications services" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act.

B. Every telecommunications company providing intrastate telephone services shall be responsible for assessing, collecting and remitting the telecommunications relay service surcharge to the taxation and revenue department. The amount of the telecommunications relay service surcharge collected by a telecommunications company shall be remitted monthly to the taxation and revenue department, on or before the twenty-fifth of the month following collection, which shall administer and enforce the collection of the surcharge pursuant to the provisions of the Tax Administration Act.

C. The taxation and revenue department shall remit to the telecommunications access fund the amount of the telecommunications relay service surcharge collected less any amount deducted pursuant to the provisions of Subsection D of this section. Transfer of the net receipts from the surcharge to the telecommunications access fund shall be made within the month following the month in which the surcharge is collected.

D. The taxation and revenue department may deduct an amount not to exceed three percent of the telecommunications relay service surcharge collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the general fund each month.

E. The general services department shall report to the revenue stabilization and tax policy committee annually by September 30 the following information with respect to the prior fiscal year:

(1) the amount and source of revenue received by the telecommunications access fund;

(2) the amount and category of expenditures from the fund;
and

(3) the balance of the fund on that June 30.

(Laws 2002, Chapter 18, Section 72)

3.21.7.8 - IMPOSITION BARRED BY FEDERAL LAW - LOCAL EXCHANGE ACCESS LINES IN INDIAN COUNTRY FOR TRIBE OR TRIBAL MEMBERS

A. The telecommunications relay service surcharge does not apply to receipts of a telecommunications company from providing intrastate telephone services to an Indian tribe or member thereof on that tribe's territory if imposition of such a surcharge is prohibited by federal law. Intrastate telephone service is provided on a tribe's territory when:

(1) the instrument through which calls originate or terminate is located on the tribe's territory; and

(2) the service is billed to the Indian tribe or a member thereof.

B. The telecommunications company must demonstrate that the intrastate telephone service is provided to an Indian tribe or member thereof. The telecommunications company must also demonstrate that the intrastate telephone service is provided through an instrument located on the tribe's territory and is billed to the Indian tribe or member thereof. The documents demonstrating that providing intrastate telephone service is not subject to the telecommunications relay service surcharge shall be retained in the telecommunication company's records.

(1) The first requirement may be met by obtaining a statement signed by the intrastate telephone service customer that the customer is an Indian tribe or member thereof. In the case of the Indian tribe itself, the statement must be attested to by a tribal official. In the case of an individual, the statement must also either specify the customer's official tribal or BIA census number or, when the customer's Indian tribe does not maintain an official census system, be attested to by an official of the customer's Indian tribe confirming this statement. This statement may also be provided to the telecommunications company by the Indian tribe on behalf of one or more of its members if attested to by a tribal official. Upon request, the secretary may approve additional methods. This documentation shall be conclusive evidence, and the only material evidence, that the customer is an Indian tribe or member thereof.

(2) The second requirement may be met if the telecommunications company keeps records adequate to document that the intrastate telephone service is provided through instruments located on the customer's tribe's territory. The second requirement may be met for mobile instruments if the seller keeps adequate records to document that:

(a) with respect to charges billed regardless of volume of calls, the purchaser's address is within the purchaser's tribe's territory; and

(b) with respect to charges for calls, the call either originates or terminates within the purchaser's tribe's territory. Telecommunications companies selling telecommunications services through mobile instruments may estimate the percentage of receipts for the report month from calls through such instruments which do not originate or terminate on the purchaser's tribe's territory. The estimate shall be the total receipts from calls from purchasers whose address is within the purchaser's tribe's territory for the reporting period multiplied by the percentage of actual receipts from calls by those purchasers originating or terminating off the purchaser's tribe's territory during the previous calendar year. The amount of actual receipts during the previous calendar year from off-territory calls shall be determined based upon evidence satisfactory to the department.

C. Intrastate telephone service provided in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

- (1) a person who is not an Indian tribe or member thereof;
- (2) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and
- (3) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the sale takes place except that, if the person is the spouse of a member of the Indian tribe on whose territory the sale takes place, that person will be considered for the purposes of Section 3.21.7.8 NMAC to be a member of the spouse's Indian tribe.

D. Intrastate telephone service provided in New Mexico to an Indian tribe or member thereof is subject to the telecommunications relay service surcharge when the instrument through which the calls originate or terminate is located outside the tribe's territory, even if the location is within the territory of another Indian tribe.

E. For the purposes of Section 3.21.7.8 NMAC:

- (1) the terms "Indian tribe" and "tribe's territory" have the meaning set forth for those terms in Section 3.2.4.7 NMAC;
- (2) "instrument" includes:
 - (a) any mobile instrument owned or leased by an Indian tribe; and
 - (b) any mobile instrument owned or leased by a member of an Indian tribe if the billing address for the mobile instrument is within the tribe's territory; and
- (3) "telecommunications relay service surcharge" means the telecommunications relay service surcharge imposed under Section 63-9F-11 NMSA 1978.

F. Section 3.21.7.8 NMAC is retroactively applicable to transactions occurring on or after July 1, 1993.

[3/16/95, 5/15/97; 3.21.7.8 NMAC - Rn & A, 3 NMAC 21.7.8, 1/15/01]